

FCC MAIL SECTION

Federal Communications Commission

DA 99-1310

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DISPATCHED
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-245
Table of Allotments,)	RM-9680
FM Broadcast Stations.)	
(Johnson City and Owego, New York))	

NOTICE OF PROPOSED RULE MAKING**Adopted: June 23, 1999****Released: July 2, 1999**

Comment Date: August 23, 1999

Reply Comment Date: September 7, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by WEBO Radio, Inc. ("petitioner"), requesting the reallocation of Channel 269A from Owego to Johnson City, New York, as the community's first local aural service, and the modification of its license for Station WLTB to specify Johnson City as its community of license. Petitioner states that it will apply for the channel, if reallocated to Johnson City.

2. Petitioner seeks the change in community pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

3. Petitioner states that Johnson City is an incorporated community with a 1990 population of 16,890 persons and is located in Broome County, with a 1990 population of 212,160 persons. It states that Johnson City has its own government, police and fire departments, a major regional hospital and its own school system, the Johnson City Central School District. In addition, according to petitioner, because of Johnson City's accessibility to three major highways, the community plays a significant role in the commercial life of the area. As an example, it states that the regional Oakdale Mall draws people from a wide area. Owego, with a 1990 population of 4,442 people, is located in Tioga County, which has a 1990 population of 52,337 people. Owego would retain local aural service from AM Station WEBO.

4. We believe petitioner's proposal warrants consideration since the reallocation of Channel 269A from Owego to Johnson City could provide the community with its first local

aural service. Where a station seeks to change its community of license, such as here, the Commission is concerned about the migration of stations from rural to urban areas. In this case, according to a staff analysis, Station WLTB, as an Owego station, presently provides a 70 dBu signal to 66.4% of the Binghamton, NY, Urbanized Area and this percentage will increase to 95% if the station is reauthorized as a Johnson City facility. However, based on the degree of coverage presently provided by Station WLTB to the Binghamton Urbanized Area, we do not believe that the request to change the station's community of license requires the submission of additional information, pursuant to a Tuck analysis, demonstrating the independence of Johnson City from Binghamton.¹ See Boulder and Lafayette, Colorado, 12 FCC Rcd 583 (1997). We note that petitioner seeks a change in Station WLTB's transmitter site but did not provide gain and loss studies showing the areas which would gain service and lose service if the proposal is adopted and the reception services which are presently available within these areas. It is therefore requested to provide the information in comments herein.

5. Channel 269A can be allotted to Johnson City in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) south to avoid a short-spacing to Station WXHC, Channel 268A, Homer, New York, and to accommodate petitioner's desired transmitter site.² Canadian concurrence in the allotment is required since Johnson City is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Johnson City, New York	--	269A
Owego, New York	269A	--

¹ See Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951); RKO General, Inc. (KFRC) ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). KFRC and Tuck clarified the type of evidence considered in determining whether a suburban community should be denied a first local service preference. First, the Commission examines "signal population coverage," that is, the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis. Second, the Commission examines the size and proximity of the suburban community relative to the adjacent city, and whether the suburban community is within the urbanized area of the city. Third, the Commission determines the interdependence of the suburban community with the central city.

² The coordinates for Channel 269A at Johnson City are 42-03-44 North Latitude and 75-56-37 West Longitude.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before August 23, 1999, and reply comments on or before September 7, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James A. Koerner
Baraff, Koerner & Olender, P.C.
3 Bethesda Metro Center
Suite 640
Bethesda, MD 20814
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.